WP(C) 81/2001

BEFORE

HON'BLE MR. JUSTICE H.N. SARMA

Heard Mr. Choudhury, learned counsel for the petitioner and Ms. Gogoi, learned Standing counsel, Education Department for the respondents.

2. The judgment & order dated 18-10-2000 passed by the learned Assam Administrative Tribunal, Assam, Guwahati (hereinafter referred to as the Tribunal) in Appeal Case No. 85 ATA/1998 is in challenge. This Court while issuing Rule on 5-1-2001 had stayed the operation of the said verdict. It is submitted at the Bar that the petitioner continues to be the Vice Principal of Bhella Higher Secondary School(hereinafter referred to also as the School) as on date. The respondent No. 5 though served with the notice of the proceedings has chosen not to contest the same. No affidavit has been filed by any of the respondents.

3. A brief outline of the relevant facts is indispensable. The petitioner who is a post-graduate in Botany was appointed subject teacher (P.G Teacher) in the said subject in P.B. Higher Secondary School on 20-12-79. The respondent No. 5 much before him was appointed as Assistant Teacher (Graduate Teacher) in Bhella Higher Secondary School on 11-3-1969. The petitioner was transferred to the said school in his own Grade and Scale of pay on 6-2-1985. In the year 1993, applications were invited for filling up the post of Vice Principal of Bhella Higher Secondary School.

Though the petitioner responded to the process, the respondent No. 5 abstained from doing so. Following the selection that was held, the petitioner was selected for the post and eventually by the order dated 14-7-1998 he was installed as the Vice Principal of the said school. Pursuant thereto, the petitioner assumed the office on the next date. Almost 4(four) months thereafter, and to be prØcise, on 6-11-1998 the respondent No. 5 preferred an appeal before the learned Tribunal impugning the order dated 14-7-1998, promoting/appointing the petitioner as Vice Principal of the School. The appeal was registered as above. Being served with the notice thereof, the petitioner and the State respondents entered appearance and contested the appeal. Vide the impugned judgment and order the same was allowed and the order dated 14-7-1998 was interfered with. Those sworn statements on oath have remained unrebutted till date.

4. Mr. Choudhury has urged that the appeal filed by the learned Tribunal under the Assam Administrative Tribunal Act, 1977 (hereinafter referred to as the Act) was on the face of the record barred by limitation and therefore the judgment & order impugned in the instant proceeding is non est in law. Relying on Section 5 of the Act, the learned counsel has contended that the period prescribed therefor being 60(sixty) days, the appeal filed on 6-11-1998 by the respondent No. 5 assailing the order of promotion/appointment was ex-facie beyond time. According to Mr. Choudhury as the rules governing the service conditions of the parties did not contemplate and/or approve filing of an appeal against the order of the administrative authority concerned, the benefit of the proviso to Section 4(2) of the Act was not available to respondent No. 5. Mr. Choudhury urged that the learned Tribunal grossly lacked jurisdiction in entertaining the appeal and this has vitiated the impugned judgment and order and the same is thus liable to be adjudged null and void.

5. Ms. Gogoi has contented that the appeal, in view of the representations made by the respondent No. 5 against the petitioner's promotion is not time barred and therefore no interference on this ground would be justified.

6. Arguments advanced had been duly considered. The Act being a special legislation in absence of any provision for relaxation of any mandate thereof the same has to be essentially adhered to. When the law prescribes anything to be done in a particular manner, it has to be performed in the way devised and all other available modes are by implication prohibited. Section 5 of the Act prescribes a period of 60(sixty) days for preferring an appeal before the learned Tribunal against any order as comprehended. As a matter of fact no appeal is entertainable under the said provision of the Act if presented beyond the time stip

ulated unless the learned Tribunal is satisfied that the appellant was prevented by sufficient cause in not preferring the appeal in time. Section 5 of the Act delineates the scope and ambit of the jurisdiction of the learned Tribunal in the matter of appeals preferred by Civil Servants. While limiting those to issues pertaining to their conditions of services it interdicts the Tribunal from entertaining such appeals if the person concerned had not availed of the remedies available to him under the relevant Service Rules, executive instructions or orders. It however, permits the Tribunal to entertain the appeal of the Civil servant if any appeal or representation filed by him under the relevant Service Rules, before the competent authority is not disposed of within a period of 6 months from the date of institution/ submission thereof.

7. On a scrutiny of the records of the learned Tribunal it is apparent that the appeal had been filed by the respondent No. 5 beyond the period of 60(sixty) days from the date of the order impugned therein i.e., 14-7-1998 and that no application for condonation of delay had been filed either. No prayer to the said effect appears to have been made in the appeal memo as well. The stand of the respondent No. 5 appears to be that appeals/representations were filed by him on 28-8-1998 & 23-9-1998. The perusal of the record reveals that the representations on the said dates were made by respondent No. 5 before the Director of Secondary Education Assam and Inspector of Schools BDC, Barpeta.

8. The Assam Secondary Education (Provincialised) Service Rules, 1982(hereinafter referred to as the Rules) which inter-alia deal with the method of recruitment to the post involved and the associated conditions of services do not provide for any appeal or representation against any order of recruitment or promotion or relating to any other condition of service. The learned Standing Counsel, Education Department has not been able to invite the attention of this Court to any provision in the relevant Service Rules, executive instructions or administrative guidelines, permitting filing of such appeal or representation.

9. In the above premise, the implied relaxation of the period of limitation by 6 months as contemplated in the proviso of Section 4(2) of the Act, was not available to the respondent No. 5. The appeal filed, therefore, was clearly barred by time.

10. The learned Tribunal seems to have overlooked this vital aspect of the matter rendering its decision non existent in law. On a consideration of the recorded facts in their entirety and the provisions of law discussed above, I am inclined to sustain the contentions raised with regard to the maintainability of the appeal. The appeal being barred by time, the learned Tribunal, in view of the unambiguous provisions of the Act, lacked jurisdiction to entertain the same. Consequently, the impugned judgment and order being unsustainable in law, on that count alone, it is set aside. The writ petition stands allowed. No costs.